

REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's Action dated March 2, 2010. In view of the amendments and arguments presented herein, Applicant respectfully submits that the claims are in condition for allowance.

Claim 1 has been objected to. Claims 1-25 have been rejected under 35 U.S.C. §112 as failing to comply with the written description requirement and for being indefinite. Claims 1-6, 11-14, 16 and 18-21 have been rejected under 35 U.S.C. §102 as being anticipated by Nash. Claims 10 and 18 have been rejected under 35 U.S.C. §103 as being unpatentable over Nash alone or in view of Grieshaber. Claims 7-9 and 22-25 have been rejected under 35 U.S.C. §103 as being unpatentable over Nash in view of Reichinger. Claims 15 and 17 have been rejected under 35 U.S.C. §103 as being unpatentable over Nash in view of Wright. Claims 1-6, 10, 14, 16 and 18-21 have been rejected under 35 U.S.C. §103 as being unpatentable over Houzego. Claim 10 has been rejected under 35 U.S.C. §103 as being unpatentable over Houzego in view of Grieshaber. Claims 7-9 and 22-25 have been rejected under 35 U.S.C. §103 as being unpatentable over Houzego in view of Reichinger. Claims 15 and 17 have been rejected under 35 U.S.C. §103 as being unpatentable over Houzego in view of U.S. Patent No. 5,705,209 to Wright ("Wright.").

Claims 1, 5, 7-9, 12, 19 and 22 have been amended, Claims 3, 4, 6 and 18 have been cancelled. Accordingly, Claims 1, 2, 5, 7-17 and 19-25 are pending.

Interview

An Interview was conducted between Examiner Yager and the undersigned on August 27, 2010. The Examiner stated that he had briefly reviewed the previously-submitted Amendment and Response After Final that accompanied the RCE filed on August 2, 2010. The Examiner indicated that the amendments presented did appear to address the 35 U.S.C. §112 rejections previously issued by the Examiner. The Examiner, however, indicated that the additions to Claim 1 may be rejected under 35 U.S.C. §112. The potential issues were discussed and the undersigned agreed to amend Claim 1 in the hopes of correcting such issues prior to substantive review. Amended Claim 1 provided below, is believed to include the amendments discussed that would address any issues under 35 U.S.C. §112.

The rejections under 35 U.S.C. §102 to Nash and Houzego were also discussed. The undersigned indicated that he believed that the claims were distinguished over Nash and Houzego as it is believed that the pending claims include features not found in those references.

The undersigned thanks the Examiner for his time and guidance and is open for a further conversation if the Examiner's time and schedule permit.

Claim Objections

The Examiner has correctly identified the phrase "gas-pressurize" of Claim 1 as being incorrect. Accordingly, the phrase has been amended to read "gas-pressurized" as suggested by the Examiner. Withdrawal of this objection is respectfully requested.

Claim Rejections – 35 U.S.C. §112

The Examiner has rejected Claims 1-25 as failing to comply with the written description requirement. More specifically, the Examiner has pointed to the phrases "cylindrical body" and "cylindrical positioning device" of Claim 1 as not being enabled. Accordingly, Claim 1 has been amended to simply claim "a body" and "a positioning device".

Furthermore, the Examiner has pointed to the phrase "partition that can be opened by the gas pressurized liquid" of Claim 7 as being non-enabled. Accordingly, that phrase has been cancelled from Claim 7, thereby addressing the rejection.

Claims 1-25 have been rejected as being indefinite. Although the Applicant believes that the claim is definite to one of skill in the art, in order to facilitate prosecution, the phrase "associated with" has been amended to read "interconnected to".

The Examiner has also alleged some confusion with respect to Claim 1. As will be detailed below, Claim 1 has been amended to further describe one embodiment of the present invention. It is hoped that the amendments to Claim 1 will address this rejection.

The Examiner also has rejected Claims 3, 4 & 6 as being indefinite. Those claims have been cancelled, thereby rendering the rejection moot.

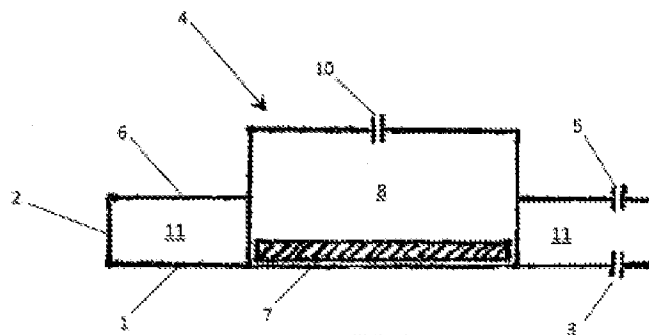
The Examiner has pointed to Claims 19-21 and stated that the phrase "the liquid" possesses insufficient antecedent basis. Accordingly, Claim 19 has been amended to now read "gas pressurized liquid".

The Examiner states that Claim 7 is indefinite. Claim 7 has been amended to remove the phrases indicate by the Examiner as allegedly being indefinite. Further, Claim 7 has been amended to now claim a primary cavity and an auxiliary cavity, wherein the auxiliary cavity is adapted to accommodate a solid or liquid substance. Similarly, Claim 22 has been amended to state that the auxiliary cavity is adapted to accommodate the solid or liquid substance. It is believed that these amendments address the Examiner's rejections.

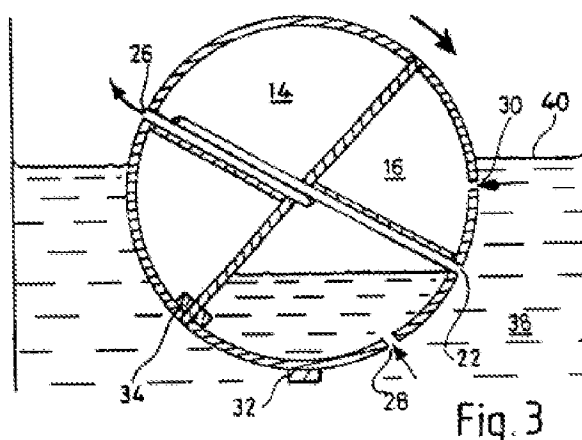
Claim Rejections – 35 U.S.C. §102 - Nash

Claims 1-6, 11-14, 16 and 18-21 have been rejected as being anticipated by Nash. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant respectfully traverses this rejection as Nash does not disclose each and every one of the elements claimed.

More specifically, Claim 1 has been amended to require at least one first cavity and at least one second cavity that is used to position the insert. The first cavity includes a single opening and the second cavity employs two openings, one that is in contact with the pressurized fluid and one that vents to the headspace. Claim 1 reads on at least Fig. 3, which is provided below, and requires that the positioning portion includes an opening (3) in a bottom surface (1) and an opening (5) in an upper surface (6) that vents gas when pressurized liquid enters the cavity (11). Further, Claim 1 requires that the vent opening (10) is positioned on an *upper surface* of the body (8).



Conversely, Nash discloses an insert with a chamber (14) similar to the body (8) of the claimed invention that has an opening (22) associated with a positioning chamber (16) via a tube (18). Fig. 3 of Nash is provided below.



With respect to Claim 2, for example, Nash does not disclose locating the positioning device outside the body as claimed. Further, the Examiner states specifically on page 9 of the Office Action that “Nash does not disclose that the body is arranged in the positioning device.”

As Nash does not disclose each and element of independent Claim 1, withdrawal of this rejection is specifically requested. In addition, Claims 2, 5, 11-14, 16 and 19-21, which depend on allowable claim 1, are believed to be allowable as well.

Claim Rejections – 35 U.S.C. §103 – Nash

Claims 10 and 18 have been rejected as being obvious in view of Nash. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int’l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). As outlined above, Nash does not teach an insert with three openings as claimed. Thus, Applicant requests withdrawal of this rejection as all of the elements of Claims 10 and 18, which depend on Claim 1, are not found in Nash.

Claim Rejections – 35 U.S.C. §103 – Nash and Grieshaber

Claim 10 has been rejected as being obvious in view of a combination of Nash and Grieshaber. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int’l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). As outlined above, Nash

does not teach an insert with three openings as claimed. Thus, Applicant requests withdrawal this rejection as all of the elements of Claim 10, which depends on amended Claim 1, are not found in Nash. The new elements of Claim 1 are not found in Grieshaber.

Claim Rejections – 35 U.S.C. §103 – Nash and Reichinger

Claims 7-9 and 22-25 have been rejected as being obvious in view of a combination of Nash and Reichinger, which has been cited for disclosing a multi-compartmented device. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). As outlined above, Nash does not teach an insert with three openings as claimed. Thus, Applicant withdrawal this rejection as all of the elements of Claims 7-9 and 22-25, which depend on amended Claim 1, are not found in Nash. The new elements of Claim 1 are also not found in Reichinger.

Claim Rejections – 35 U.S.C. §103 – Nash and Wright

Claims 15 and 17 have been rejected as being obvious in view of a combination of Nash and Wright, which has been cited for disclosing the claimed snap connection. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). As outlined above, Nash does not teach an insert with three openings as claimed. Thus, Applicant withdrawal this rejection as all of the elements of Claims 15 and 17, which depend on amended Claim 1, are not found in Nash. The new elements of Claim 1 are also not found in Wright.

Claim Rejections – 35 U.S.C. §103 – Houzgo

Claims 1-6, 10-14, 16 and 18-21 have been rejected as being obvious in view of Houzgo. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). Houzgo does not teach an insert with three openings as claimed. Thus, Applicant requests withdrawal of this rejection.

Claim Rejections – 35 U.S.C. §103 – Houzego and Grieshaber

Claim 10 has been rejected as being obvious in view of a combination of Houzego and Grieshaber. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). As outlined above, Houzego does not teach an insert with three openings positioned as claimed. Thus, Applicant requests withdrawal this rejection as all of the elements of Claim 10, which depend on amended Claim 1, are not found in Houzego. The new elements of Claim 1 are also not found in Grieshaber.

Claim Rejections – 35 U.S.C. §103 – Houzego and Reichinger

Claims 7-9 and 22-25 have been rejected as being obvious in view of a combination of Houzego and Reichinger, which has been cited for disclosing a multi-compartmented device. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). As outlined above, Houzego does not teach an insert with three openings positioned as claimed. The new elements of Claim 1 are also not found in Reichinger.

Claim Rejections – 35 U.S.C. §103 – Houzego and Wright

Claims 15 and 17 have been rejected as being obvious in view of a combination of Houzego and Wright, which has been cited for disclosing the claimed snap connection. Obviousness requires a suggestion of all the elements of a claim. CFMT, Inc. V. Yieldup Int'l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). As outlined above, Houzego does not teach an insert with three openings positioned as claimed. The new elements of Claim 1 are also not found in Wright.

Conclusion

Applicant also respectfully traverses the remainder of the Examiner's assertions as to what is disclosed in and/or taught by the cited prior art. That is, since the amendments and arguments made herein are believed to sufficiently address the rejections, any Examiner assertions not specifically addressed are not admitted as true. Furthermore, any arguments concerning motivation to combine, etc. not specifically put forth are not waived.

Based upon at least the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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Date: August 30, 2010